### LEGISLATURE OF NEBRASKA

#### NINETY-EIGHTH LEGISLATURE

### FIRST SESSION

# LEGISLATIVE BILL 509

Introduced by Raikes, 25

Read first time January 17, 2003

Committee: Revenue

## A BILL

1	FOR	AN	ACT relating to inheritance taxes; to amend sections
2			77-2003, 77-2008.01, 77-2014, 77-2017, 77-2018,
3			77-2018.02, 77-2018.07, and 77-2032, Reissue Revised
4			Statutes of Nebraska; to change payment and distribution
5			of tax revenue; to create a fund; to provide duties for
6			the Tax Commissioner; to provide for applicability; and
7			to repeal the original sections.

8 Be it enacted by the people of the State of Nebraska,

Section 1. Section 77-2003, Reissue Revised Statutes of

- 2 Nebraska, is amended to read:
- 3 77-2003. The tax imposed upon transfers under sections
- 4 77-2001 and 77-2002 shall be paid to the treasurer of the proper
- 5 county Tax Commissioner and all heirs, legatees and devisees,
- 6 personal representatives, other recipients of property subject to
- 7 tax, and trustees shall be liable for any and all such taxes until
- 8 the same shall have been paid as hereinafter directed. This tax
- 9 shall be a lien on the real property subject thereto until paid or
- 10 otherwise terminated pursuant to section 77-2037, except that no
- 11 interest in any property passing from the decedent to the
- 12 decedent's surviving spouse shall be subject to the lien.
- 13 Sec. 2. Section 77-2008.01, Reissue Revised Statutes of
- 14 Nebraska, is amended to read:
- 15 77-2008.01. When property is devised, bequeathed, or
- 16 otherwise transferred or limited in trust or otherwise in such a
- 17 manner as to be subject to the tax prescribed in sections 77-2001
- 18 to 77-2008 77-2008.02, and the rights, interests, or estates of the
- 19 transferees, legatees, devisees, or beneficiaries are dependent
- 20 upon contingencies or conditions whereby they may be wholly or in
- 21 part created, defeated, extended, or abridged, an inheritance tax
- 22 shall be imposed upon such transfer at the highest rate which, on
- 23 the happening of any of the contingencies or conditions, would be
- 24 possible under the provisions of Chapter 77, article 20, or to any
- 25 person, corporation, or institution payable at the time prescribed
- 26 in section 77-2010. On + PROVIDED, that on the happening of any
- 27 contingency or condition whereby the said property, or any part
- 28 thereof, is transferred to any person, corporation, or institution,

exempt from taxation under the provisions of Chapter 77, article 1 2 20, or to any person, corporation, or institution as to whom or 3 which the rate of tax is less than the rate imposed and paid, such 4 person, corporation, or institution shall be entitled to a 5 redetermination of the tax and to a return by the county treasurer 6 or county treasurers of so much of the tax imposed and paid as 7 equals the difference between the amount imposed and paid and the amount which such person, corporation, or institution should pay 8 9 under Chapter 77, article 20. The + AND PROVIDED FURTHER, that 10 where such tax imposed and paid is held by the county treasurer or 11 county treasurers, as provided in this section, the county court 12 having jurisdiction is authorized and empowered to enter an order 13 in the estate and forward a copy thereof to the county treasurer or 14 county treasurers, directing said county treasurer or county 15 treasurers to invest and reinvest said directing the investment of the funds so held paid in United States Government bonds, United 16 17 States treasury certificates, United States treasury notes, or other direct obligations of the United States Government, and 18 interest at the rate drawn by said the bonds, certificates, notes 19 20 or other government obligations, as herein provided, shall be 21 credited to the particular inheritance tax account so held. Upon 22 redetermination of the inheritance tax, the tax refunded, if any, together with the interest received on the sum refunded, shall be 23 24 paid by the county treasurer or county treasurers in a lump sum to 25 the estate of the deceased person paying said the tax, or to the 26 person or persons found entitled thereto by the county court, and 27 the balance of said the tax, together with the interest received 28 thereon, shall be credited by the county treasurer or county

1 treasurers to the general inheritance tax fund of the county or

- 2 counties to the Inheritance Tax Distribution Fund. Where an estate
- 3 for life or for a term can be divested by the act or omission of
- 4 the legatee, devisee, transferee, or beneficiary it shall be taxed
- 5 as if there were no possibility of such divesting.
- 6 Sec. 3. Section 77-2014, Reissue Revised Statutes of
- 7 Nebraska, is amended to read:
- 8 77-2014. (1) Every sum of money retained by an executor,
- 9 administrator, or trustee, or paid into his or her hands for any
- 10 property tax on any property, shall be paid by him or her within
- 11 thirty days thereafter to the treasurer of the proper county, and
- 12 the treasurer shall give, and every executor, administrator, or
- 13 trustee shall take a receipt from him or her of said the payments.
- 14 (2)(a) For purposes of this section, proper county shall
- 15 mean the county of the decedent's residence, except (i) when the
- 16 decedent had an interest in real property located in a county other
- 17 than his or her residence at the time of the death of the decedent,
- 18 the words proper county shall mean the county in which the real
- 19 property is situated, or (ii) when the decedent had an interest in
- 20 personal property subject to being listed and assessed for personal
- 21 property taxation at the time of the death of the decedent, the
- 22 words proper county shall mean the county where the property is
- 23 listed and assessed.
- 24 (b) When the decedent is a nonresident, proper county
- 25 shall mean the county provided in subdivisions (2)(a)(i) and
- 26 (2)(a)(ii) of this section and, as to any other property which may
- 27 be subject to Nebraska inheritance taxation, the county where such
- 28 property is located.

1 (3) The total inheritance tax assessed against the estate

- 2 shall be apportioned among the counties in the ratio that the value
- 3 of the gross property subject to tax located in each county bears
- 4 to the gross value of all property reportable for Nebraska
- 5 inheritance tax purposes.
- 6 (4) Questions that may arise as to the proper place to
- 7 list and assess such personal property for the purposes of sections
- 8 77-2001 to 77-2037 shall be determined pursuant to procedure set
- 9 forth in sections 77-2018.01 to 77-2027.
- 10 Sec. 4. Section 77-2017, Reissue Revised Statutes of
- 11 Nebraska, is amended to read:
- 12 77-2017. Whenever any foreign executors or
- 13 administrators shall assign or transfer any stocks or loans in this
- 14 state standing in the name of the decedent or in trust for a
- 15 decedent which shall be liable to inheritance tax, the tax shall be
- 16 paid to the treasury or treasurer of the proper county on the
- 17 transfer thereof Tax Commissioner. If not paid by the foreign
- 18 executor or administrator, the corporation making such transfer
- 19 shall become liable to pay the tax where the corporation has
- 20 knowledge before the transfer that the stocks or loans are liable
- 21 for such tax.
- 22 Sec. 5. Section 77-2018, Reissue Revised Statutes of
- 23 Nebraska, is amended to read:
- 24 77-2018. When any amount of inheritance tax shall have
- 25 been paid erroneously, the Tax Commissioner to the county
- 26 treasurer, he shall, upon a finding by the court and an order
- 27 rendered to him or her of the erroneous payment, refund and pay to
- 28 the executor, administrator or trustee, person or persons who have

1 paid any such tax in error the amount of such tax so paid. All

- 2 applications for the repayment of the tax shall be made to the
- 3 county court within two years of the date of payment. The county
- 4 court shall hear all evidence relevant to its finding whether or
- 5 not any amount of inheritance tax has been erroneously paid and if
- 6 any refund of such payment is due. The court shall notify the
- 7 county treasurer Tax Commissioner of its final determination.
- 8 Sec. 6. Section 77-2018.02, Reissue Revised Statutes of
- 9 Nebraska, is amended to read:
- 10 77-2018.02. (1) In the absence of any proceeding brought
- 11 under Chapter 30, article 24 or 25, in this state, proceedings for
- 12 the determination of the tax may be instituted in the county court
- 13 of the county where the property or any part thereof which might be
- 14 subject to tax is situated.
- 15 (2) Upon the filing of the petition referred to in
- 16 subsection (1) of this section, the county court shall order the
- 17 petition set for hearing, not less than two nor more than four
- 18 weeks after the date of filing the petition, and shall cause notice
- 19 thereof to be given to all persons interested in the estate of the
- 20 deceased and the property described in the petition, except as
- 21 provided in subsections (4) and (5) of this section, in the manner
- 22 provided for in subsection (3) of this section.
- 23 (3) The notice, provided for by subsection (2) of this
- 24 section, shall be given by one publication in a legal newspaper of
- 25 the county or, in the absence of such legal newspaper, then in a
- 26 legal newspaper of some adjoining county of general circulation in
- 27 the county. In addition to such publication of notice, personal
- 28 service of notice of said the hearing shall be had upon the county

1 attorney of each county in which the property described in the

- 2 petition is located, at least one week prior to the hearing.
- 3 (4) If it appears to the county court, upon the filing of
- 4 the petition, by any person other than the county attorney, that no
- 5 assessment of inheritance tax could result, it shall forthwith
- 6 enter thereon an order directing the county attorney to show cause,
- 7 within one week from the service thereof, why determination should
- 8 not be made that no inheritance tax is due on account of the
- 9 property described in the petition and the potential lien thereof
- 10 on such property extinguished. Upon service of such order to show
- 11 cause and failure of such showing by the county attorney, notice of
- 12 such hearing by publication shall be dispensed with, and the
- 13 petitioner shall be entitled without delay to a determination of no
- 14 tax due on account of the property described in the petition, and
- 15 any potential lien shall be extinguished.
- 16 (5) If it shall appear to the county court that (a) the
- 17 county attorney of each county in which the property described in
- 18 the petition is located has executed a waiver of notice upon him or
- 19 her to show cause, or of the time and place of hearing, and has
- 20 entered a voluntary appearance in such proceeding in behalf of the
- 21 county and the State of Nebraska, and (b) either (i) all persons
- 22 against whom an inheritance tax may be assessed are either a
- 23 petitioner or have executed a waiver of notice upon them to show
- 24 cause, or of the time and place of hearing, and have entered a
- 25 voluntary appearance, or (ii) a party to the proceeding has agreed
- 26 to pay to the proper counties the full inheritance tax so
- 27 determined, the court may dispense with the notice provided for in
- 28 subsections (2) and (3) of this section and proceed without delay

1 to make a determination of inheritance tax, if any, due on account

- 2 of the property described in the petition.
- 3 Sec. 7. Section 77-2018.07, Reissue Revised Statutes of
- 4 Nebraska, is amended to read:
- 5 77-2018.07. (1) Any person subject to the tax imposed by
- 6 Chapter 77, article 20, may, prior to the final determination of
- 7 the inheritance tax, make a tentative payment of the tax in order
- 8 to avoid the accrual of interest on such tax. Any person who
- 9 desires to pay such tentative inheritance tax shall make a written
- 10 application to the county court for an order allowing the payment
- 11 of a sum specified in such application, prior to the final
- 12 determination of the inheritance tax due.
- 13 (2) If the county attorney shall not consent to the
- 14 amount requested in the application by entering his or her
- 15 voluntary appearance and waiver of notice, he or she shall within
- 16 seven days of the filing of the application show in writing what
- 17 sum he or she requests for the purpose of the prepayment. The
- 18 county court shall issue an order allowing a tentative payment of
- 19 the tax in such amount as the court shall specify.
- 20 (3) The county treasurer Tax Commissioner shall receive
- 21 all taxes paid pursuant to this section but shall not be required
- 22 to invest any tentative tax payment made for the benefit of the
- 23 estate nor shall such treasurer the Tax Commissioner be required to
- 24 pay interest on any refund claim for the period he or she holds the
- 25 tentative tax payment.
- 26 (4) The tentative tax payment allowed in this section
- 27 shall apply to both probate and nonprobate estates. The tentative
- 28 tax payment shall not be a final order and may be amended, altered,

- 1 or modified by subsequent order of the court.
- Sec. 8. Section 77-2032, Reissue Revised Statutes of
- 3 Nebraska, is amended to read:
- 4 77-2032. (1) The inheritance taxes paid to the Tax
- 5 Commissioner shall be remitted to the State Treasurer. Until
- 6 January 1, 2006, the State Treasurer shall credit the proceeds to
- 7 the General Fund. Commencing January 1, 2006, the State Treasurer
- 8 shall credit the proceeds to the Inheritance Tax Distribution Fund,
- 9 which fund is created. Commencing January 1, 2006, each month the
- 10 Tax Commissioner shall distribute the inheritance taxes collected
- 11 in the prior month to the counties based upon a five-year average
- 12 of inheritance tax receipts. The Tax Commissioner shall calculate
- 13 five-year averages of inheritance tax revenue for each county and
- 14 for the state. Each county shall receive a portion of the total
- 15 inheritances taxes collected, plus interest earned on the fund, in
- 16 the prior month by multiplying the total inheritance taxes
- 17 collected by the ratio of the five-year average for the county and
- 18 the five-year average for the state.
- 19 (2) The total inheritance tax assessed against an estate
- 20 shall be apportioned among the counties in the ratio that the value
- 21 of the gross property subject to tax located in each county bears
- 22 to the gross value of all property reportable for Nebraska
- 23 inheritance tax purposes.
- 24 (3) All inheritance tax money received or collected by
- 25 each county shall be credited by resolution of the county board in
- 26 whole or in part either to the county general fund or to any other
- 27 fund of the county selected by the county board.
- 28 (4) Any money in the Inheritance Tax Distribution Fund

1 available for investment shall be invested by the state investment

- 2 officer pursuant to the Nebraska Capital Expansion Act and the
- 3 Nebraska State Funds Investment Act.
- 4 Sec. 9. The changes made to sections 77-2003,
- 5 77-2008.01, 77-2014, 77-2017, 77-2018, 77-2018.02, 77-2018.07, and
- 6 77-2032 by this legislative bill apply to decedents whose death
- 7 occurs on or after January 1, 2004.
- 8 Sec. 10. Original sections 77-2003, 77-2008.01, 77-2014,
- 9 77-2017, 77-2018, 77-2018.02, 77-2018.07, and 77-2032, Reissue
- 10 Revised Statutes of Nebraska, are repealed.